

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-5819 AHM (FMOx)	Date	April 24, 2009
Title	RICHARD DUPLESSE, <i>et al.</i> v. COUNTY OF LOS ANGELES, <i>et al.</i>		

Present: The Honorable	A. HOWARD MATZ, U.S. DISTRICT JUDGE
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S. Eagle	Not Reported	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys NOT Present for Plaintiffs:	Attorneys NOT Present for Defendants:	

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court is prepared to adopt the proposed order attached to the parties' Joint Stipulation Re: Conditional Certification of Collective Action and Approval of Class Notice, albeit with the changes that can be found in the attached tentative order. But before the Court does so, the parties must file a joint brief setting forth whether putative class members have a right to prevent the dissemination of their Social Security Numbers by a governmental entity to a private entity. If the putative class members have such a right, the Court will not enter the attached tentative order unless the parties establish that the Court has the authority to override that right for the limited purposes described therein. If the Court does not have such authority, the parties should suggest an alternative mechanism for insuring proper notice.

The parties are ORDERED to file the brief by not later than May 5, 2009.

Initials of Preparer : _____
se _____

NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RICHARD DUPLESSE, et al.,

Plaintiffs,

v.

COUNTY OF LOS ANGELES,

Defendants.

Case No. CV08-5819-AHM
(FMOx)

**~~PROPOSED~~ ORDER RE:
CONDITIONAL
CERTIFICATION OF
COLLECTIVE ACTION AND
APPROVAL OF CLASS NOTICE**

1 WHEREAS Plaintiffs Richard Duplesse and Tom Fahrny (“Plaintiffs”) are
2 employed by the Defendant County of Los Angeles Fire Department (“Defendant”
3 or “the County”);

4 WHEREAS, at all material times, the terms and conditions of Plaintiffs’
5 employment by the County were set out in a Memorandum of Understanding
6 effective May 17, 2005, between the County and Los Angeles County Firefighters
7 Local 1014, IAFF, AFL-CIO (the “Union”), as amended by Amendment No. 1
8 dated July 25, 2006 (collectively, the “MOU”)¹ and in the Los Angeles County
9 Code (the “County Code”);

10 WHEREAS, at all material times, Plaintiffs were classified as Item 199 “Fire
11 Fighter (56 Hours)”;

12 WHEREAS, at all material times, Plaintiffs were regularly assigned to
13 a “platoon schedule” consisting of approximately 56 hours per week;

14 WHEREAS, Plaintiffs contend that they were not exempt from the overtime
15 compensation requirements of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et*
16 *seq.* (“FLSA”);

17 WHEREAS, the County contends that persons employed pursuant to the
18 MOU in the classification of Fire Fighter (56 Hours) and who are regularly
19 assigned to a platoon schedule are partially exempt from the overtime compensation
20 requirements of the FLSA pursuant to Section 7(k) of the FLSA, 29 U.S.C. §
21 207(k);

22 WHEREAS, Plaintiffs claim that the County has violated the FLSA because
23 it did not pay them and others similarly-situated overtime compensation at the
24 regular rate of pay, as required by the FLSA, because it does not include all non-
25 discretionary bonuses in the regular rate calculation;

26 WHEREAS, the County denied and continues to deny Plaintiffs’ claim and
27

28 ¹ On March 3, 2009, the County Board of Supervisors approved an extension
of the MOU through December 31, 2009.

1 contends that its calculation of their overtime compensation complies fully with the
2 requirements of the FLSA;

3 WHEREAS, Plaintiffs seek an order to conditionally certify a group of
4 similarly-situated Fire Fighters pursuant to Section 16(b) of the FLSA, 29 U.S.C. §
5 216(b), and for facilitated notice to all such persons;

6 WHEREAS, for purposes of judicial economy, the County agrees that
7 conditional certification and facilitated notice may proceed, while preserving the
8 County's right to move for decertification of the collective action on the grounds
9 that the proposed group is not similarly situated, and while preserving all of the
10 County's affirmative defenses, including that plaintiffs' claims are barred, in whole
11 or in part, by the applicable statutes of limitations, including 29 U.S.C. § 255.

12 PURSUANT TO THE PARTIES' STIPULATION AND GOOD CAUSE
13 APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. Plaintiffs' FLSA claim shall proceed as a conditional collective action
15 under 29 U.S.C. § 216(b) on behalf of all persons employed by the County of Los
16 Angeles pursuant to the MOU as 56-hour Fire Fighters (that is, Item 199 Fire
17 Fighters) who were assigned to (1) a post paramedic position, (2) the Hazardous
18 Materials Task Force, or (3) an Urban Search and Rescue position for at least 30
19 consecutive calendar days during the period of September 9, 2005, to the date of
20 entry of this ORDER ("Claims Period").

21 2. The FLSA Notice and Consent to Join forms, as modified by the Court
22 and attached hereto as Exhibit "A," are approved.

23 3. CPT Group, Inc. ("Notice Administrator") is approved as the Notice
24 Administrator for the FLSA Notice pursuant to 29 U.S.C. § 216(b). Plaintiffs shall
25 bear the cost of notice, including but not limited to fees charged by the Notice
26 Administrator and copying and mailing fees.

27 4. Within sixty (60) days of the date of this ORDER, the County shall
28 produce to Plaintiffs' counsel and the Notice Administrator a machine-readable list

1 of the names and addresses of all persons described in paragraph 1 of this ORDER
2 (“Mailing List”), so that notice may be timely accomplished. Use and possession
3 of the name and address information provided by the County pursuant to this
4 paragraph shall be solely limited to Plaintiffs’ counsel and the Notice
5 Administrator. The Notice Administrator and Plaintiffs’ counsel shall hold the
6 contact information produced by the County in the strictest confidence, in a
7 password protected database.

8 5. The Notice Administrator shall mail the proposed FLSA Notice and
9 Consent to Join Form to all persons described in paragraph 1 of this ORDER as
10 soon as practicable but not later than fifteen (15) days after receipt of the Mailing
11 List described in paragraph 4 of this ORDER. The opt-in period shall close 60 days
12 after the mailing date described in this paragraph.

13 6. As soon as practicable, and in any event not later than thirty (30) days
14 prior to the close of the opt-in period, the Notice Administrator shall give notice
15 (and supplemental notices, as necessary) to all counsel of the names of putative
16 class members whose FLSA notices are returned by the Post Office as
17 undeliverable. Within fourteen (14) days of such notice, the County shall provide a
18 copy of the Notice and Consent to Join forms to each individual identified in the
19 notice who is, at that time, employed by the County, and shall produce to the Notice
20 Administrator the social security number (“SSN”) of any person described in
21 paragraph 1 of this ORDER who is no longer employed by the County and whose
22 FLSA Notice was returned by the Post Office. The SSNs shall be provided
23 exclusively to the Notice Administrator who shall hold them in strictest confidence,
24 in a password protected database. Use of the SSNs shall be limited to performing
25 skip tracing methods to locate the current address of the person to whom notice
26 should be given.

27 7. The County shall not transmit any communication to the persons
28 described in paragraph 1 that undermines the FLSA notice or attempts to

1 discourage participation in the collective action.

2 8. Each "Consent to Join" form shall be postmarked or faxed to the
3 Notice Administrator not later than sixty (60) days after the date that the Notice
4 Administrator mails the notice (i.e., not later than the close of the opt-in period).
5 Within twenty (20) days after the close of the opt-in period, all Consent to Join
6 forms shall be filed with the Court.

7 9. After the County has produced to Plaintiffs' counsel and the Notice
8 Administrator the Mailing List containing the names and addresses of all persons
9 described in paragraph 1 of this ORDER, the parties shall meet and confer and the
10 County shall describe the criteria and method it used to identify the Fire Fighters
11 included on the Mailing List. Any objection to the County's method of
12 identification shall be provided within five days of completion of the meet and
13 confer. If the parties are unable to resolve any issues pertaining to the Notice and
14 Consent process, either party may request leave to file a motion with the Court. If
15 such leave is granted, the time for the Notice to be mailed, set forth in paragraph 5,
16 shall be tolled until the dispute that is the subject of the motion is resolved.

17 10. After the litigation is finally resolved, the Notice Administrator will
18 return the Fire Fighter data, in its original form, to the County and will purge any
19 electronic data respecting the Fire Fighters, including addresses and social security
20 numbers, from their systems.

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22 IT IS SO ORDERED.

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24 Dated: _____, 2009

25 A. HOWARD MATZ
26 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

NOTICE OF COLLECTIVE ACTION

THIS IS NOT A LAWSUIT AGAINST YOU. PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.

TO: All persons who were employed by the County of Los Angeles (the “County”) from September 9, 2005 to [REDACTED] (“Claims Period”) as a 56-hour Fire Fighter who were assigned to a post-paramedic position, the Hazardous Materials Task Force, or an Urban Search and Rescue position for at least 30 consecutive calendar days during the Claims Period.

RE: Fair Labor Standards Act (“FLSA”) Lawsuit Filed Against the County of Los Angeles

1. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are “similarly situated” to the named Plaintiffs, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit, if you so desire.

As described more fully below, **if you are eligible and wish to participate in this collective action, you must timely complete and have postmarked or faxed the “Consent to Join” form attached to this Notice by not later than [insert date 60 days after the mailing date].**

2. DESCRIPTION OF THE LAWSUIT

On September 9, 2008, the named Plaintiffs filed a Complaint in the U.S. District Court for the Central District of California against the County on behalf of themselves and all other similarly situated Fire Fighters. Plaintiffs allege that the County failed to pay all overtime pay to which they were entitled under the FLSA.

The named Plaintiffs are employed by the County in the classification of Fire Fighter (56 Hours). They claim the County does not properly calculate overtime compensation for them and similarly-situated others because it does not include all non-discretionary bonuses in the “regular rate” of pay.

1 The County has denied Plaintiffs' claims and alleges that it paid all overtime
2 due to them (and similarly-situated others) pursuant to the FLSA.

3 **3. THE CURRENT STATE OF THIS LAWSUIT**

4 This lawsuit is in the early stages of litigation. The Plaintiffs and the County
5 have stipulated to conditional certification as a collective action and that this Notice
6 be sent to you to provide information about the case and give you an opportunity to
7 join the case by submitting a "Consent to Join" form.

8 **4. PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

9 The U.S. District Court has ordered this FLSA Notice to be distributed to all
10 56-hour Fire Fighters employed by the County who were assigned to post
11 paramedic positions, the Hazardous Materials Task Force, or Urban Search and
12 Rescue positions for at least 30 consecutive calendar days during the Claims
13 Period, which is [FILL IN DATES].

14 **5. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

15 If you want to participate in this lawsuit, you must take affirmative steps to
16 indicate your intent to join the action. You must complete, sign and fax or mail a
17 copy of the "Consent to Join" form, which is attached to this Notice, to CPT Group,
18 Inc., who is the court-approved Notice Administrator. **If mailed, your signed**
19 **"Consent to Join" form must be postmarked no later than [insert date 60 days**
20 **after the mailing date].**

21 **If faxed, your signed "Consent To Join" form must be successfully faxed**
22 **no later than [insert date 60 days after the mailing date].**

23 If your "Consent to Join" form is not postmarked, or successfully faxed, by
24 the applicable deadline, you will not be allowed to participate in this lawsuit.

25 Having a "Consent to Join" form filed does not guarantee that you will be
26 able to participate in the trial of this lawsuit, because individual participation may
27 depend upon a final ruling from the District Court that you and the named Plaintiffs
28 are "similarly situated" under federal law. However, if you fail to return and have

1 filed a "Consent to Join" form on or before the deadline, you cannot participate in
2 any settlement or judgment for damages under the FLSA as part of this lawsuit.

3 If you send a "Consent to Join" form to the Notice Administrator and then
4 move or change your address, please ADVISE the Notice Administrator and
5 attorneys for the Fire Fighters of your new address.

6 **6. STATUTE OF LIMITATIONS**

7 The FLSA contains a limitations period of at least two years and potentially
8 up to three years for the filing of a claim for unpaid overtime wages, after which the
9 claim is forever barred for being filed too late. This deadline is known as the
10 "statute of limitations." In the event that you decide not to file a Consent to Join in
11 this lawsuit, you should consult with your own attorney as to the statute of
12 limitations which would apply to any claim you may have.

13 **7. EFFECT OF JOINING THIS SUIT**

14 If you file a "Consent to Join" form and the Court later permits your claims
15 to proceed as part of the collective action, you will be bound by any judgment
16 regarding the FLSA claims in the lawsuit, whether favorable or unfavorable to
17 Plaintiffs. If you choose to join this collective action, you will be represented by
18 the law firm currently representing the Plaintiffs. In the event Plaintiffs obtain a
19 favorable result, class counsel may be paid either by the Defendant, or they may,
20 either in addition to or instead of payment from Defendant, receive a percentage of
21 any money judgment or settlement in favor of you, or others similarly situated, as
22 agreed by contract and/or ordered by the Court.

23 As an alternative to joining this lawsuit, you may file your own lawsuit with
24 any counsel of your choosing, or do nothing.

25 If you return a Consent to Join form, you should be aware that important
26 decisions concerning the prosecution of this case may be made on your behalf.

27 **8. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT**

28 If you choose not to join this collective action, you will not be affected by

any judgment, whether it is favorable or unfavorable to Plaintiffs and the collective class. If you choose not to file a Consent to Join form, you are free to file your own lawsuit. If you choose not to file a Consent to Join form, the statute of limitations will continue to run until such time as you file a lawsuit on your own behalf.

9. NO RETALIATION PERMITTED

Federal law prohibits the County or its agents from taking any action against you because you elect to join this action by filling out and returning the "Consent to Join" form, or otherwise exercising your rights under the FLSA.

10. ADMINISTRATOR

CPT Group, Inc.
[address/telephone]

11. ATTORNEYS FOR THE FIRE FIGHTERS

Thomas G. Foley, Jr.
Justin P. Karczag
FOLEY BEZEK BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, California 93101
Telephone: (805) 962-9495
Facsimile: (805) 965-0722
[TBD email address to be added to form]

Richard E. Donahoo
Thomas J. Welch
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
Telephone: (714) 953-1010
Facsimile: (714) 953-1777
[TBD email address to be added to form]

12. FURTHER INFORMATION

For further information about this lawsuit, including any part of this notice, please contact Plaintiffs' counsel at the following toll-free number:

[] or email at []. PLEASE DO NOT CONTACT THE COURT OR ANY COURT PERSONNEL FOR INFORMATION.

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED

1 **BY THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA. THE COURT HAS TAKEN NO POSITION**
3 **IN THIS CASE REGARDING THE MERITS OF PLAINTIFFS' CLAIMS**
4 **OR DEFENDANT'S DEFENSES.**

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6 IT IS SO ORDERED.

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8 Dated: _____, 2009

9 A. HOWARD MATZ
10 UNITED STATES DISTRICT JUDGE
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DRAFT

CONSENT TO JOIN LAWSUIT AS A PARTY PLAINTIFF*Duplesse, et al. v. Los Angeles County, et al.,*

USDC Central District Case Number CV08-5819-AHM (FMOx).

This form must be returned by mail POSTMARKED (or successfully faxed) NO LATER THAN [insert date] to the Notice Administrator: CPT Group, Inc., [Name Address Facsimile: TBD]

I understand that this lawsuit is being brought under the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, *et seq.* I consent, agree, and opt-in to become a party plaintiff to this lawsuit. I agree to be bound by any adjudication or settlement of this action by the Court, whether it is favorable or unfavorable, and agree to designate the Plaintiffs as my agents. I understand that I will be bound by the decisions and agreements made by and entered into by the Plaintiffs. I hereby designate the Plaintiffs' attorneys to represent me in this action.

I am a current or former employee of the County of Los Angeles who was employed as a 56-hour Fire Fighter and was assigned to a post paramedic position, the Hazardous Materials Task Force, or an Urban Search and Rescue position for at least 30 consecutive calendar days between September 9, 2005, and _____.

<u>Position</u>	<u>Station</u>	<u>Approximate Dates Employed</u> <u>(Month/Year)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1 Dated: _____ Signature: _____

2 Name (Printed): _____ Telephone: _____

3 Address: _____

4 Email address: _____

5
6 If you submit this "Consent to Join" form to the Notice Administrator and
7 then you move or change any of your contact information (address, telephone,
8 email address), please advise the Notice Administrator and attorneys for the Fire
9 Fighters of your new contact information.
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